SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/29/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-092657

FILED: _____

BARBARA E REINHARDT

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1719 W MANOR ST
CHANDLER AZ 85224-0000

v.

PATRICK JAY SHANER

ROBERT J WEBER

CHANDLER CITY-MUNICIPAL COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal from an order continuing an Injunction Against Harassment pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument and this Court has considered and reviewed the record of the proceedings from the Chandler City Court, the exhibits made of record, and the Memorandum submitted by Appellant, Patrick Jay Shaner. Though Appellee was given the opportunity to submit a Memorandum, she has not done so in a timely manner.

The only issue raised by the Appellant concerns the sufficiency of the evidence to warrant the order continuing the Injunction Against Harassment. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as

the original trier of fact.[1] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[2] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[3] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[4] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[5] The Arizona Supreme Court has explained in *State v. Tison*[6] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[7]

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[1] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[2] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[3] *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[4] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[5] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[6] SUPRA.

[7] Id. At 553, 633 P.2d at 362.

Appellant argues that absolutely no evidence of harassing acts was admitted at the hearing that would support continuation of the Injunction Against Harassment. Counsel for Appellant and the trial judge noted for the record that the Chandler Justice Court had held a hearing in April of 2001 on many of the circumstances and facts enumerated in the Petition for Injunction Against Harassment originally filed by Appellee with the Chandler City Court. Counsel for Appellant argued that since the Chandler Justice Court had made findings regarding those facts as insufficient to continue that Injunction Against Harassment, that finding was binding against Appellee in this proceeding. The trial judge then noted:

> We are going to proceed with the hearing today, because there could be factual circumstances which would arise to a level to cause this court to impose such an injunction.
>
> If there had been no further factual events since that time, then the argument would be well taken. But if there are further facts, then we need to give the Petitioner an opportunity for the court to hear them.[8]

The only evidence of acts of alleged harassment which occurred after April, 2001 that are described by Appellee, are that "he (Appellant, Patrick Shaner) has continued to follow me around online and make comments about things that I am saying."[9] During her testimony, Appellee describes that after April of 2001 several instances occurred where Appellant followed her to websites and posted comments, apparently in response to some of Appellee's comments that were also posted. Appellee does not describe acts of harassment, but acts of mutual disagreement. These acts of mutual disagreement were surprisingly civil and

[8] R.T. of November 2, 2001, at page 6.
[9] Id. at page 13.

non-threatening. At one point Appellee described Appellant's communication via a website as: "I'm no threat. I'm out of here."[10]

This Court is not able to find that substantial evidence was presented to the trial court. No evidence of a series of acts of harassment after April, 2001 was presented to the trial judge. Therefore, the trial judge erred in continuing the Injunction Against Harassment.

IT IS THEREFORE ORDERED reversing the Chandler City Court's order continuing the Injunction Against Harassment in full force and effect.

IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court with instructions to vacate the Injunction Against Harassment in its entirety.

[10] Id. at page 14.